

of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the natural resources and services provided by the restoration action following the process described in § 990.14(c) of this part.

(4) *Discounting and uncertainty.* When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

§ 990.54 Restoration selection—evaluation of alternatives.

(a) *Evaluation standards.* Once trustees have developed a reasonable range of restoration alternatives under § 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum:

- (1) The cost to carry out the alternative;
- (2) The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- (3) The likelihood of success of each alternative;
- (4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- (5) The extent to which each alternative benefits more than one natural resource and/or service; and
- (6) The effect of each alternative on public health and safety.

(b) *Preferred restoration alternatives.* Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative.

(c) *Pilot projects.* Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

§ 990.55 Restoration selection—developing restoration plans.

(a) *General.* OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan.

(b) *Draft Restoration Plan.* (1) The Draft Restoration Plan should include:

- (i) A summary of injury assessment procedures used;
- (ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident;
- (iii) The goals and objectives of restoration;
- (iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under § 990.53 of this part, and evaluated under § 990.54 of this part;
- (v) Identification of the trustees' tentative preferred alternative(s);
- (vi) A description of past and proposed involvement of the responsible parties in the assessment; and
- (vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for interim corrective action.

(2) When developing the Draft Restoration Plan, trustees must establish